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IN THE

Supreme Court of the United States

October Term, 1968

No. 242

JORGE I. ROSSO and wife CARMEN DESCARTES,
Appellants,

v.

COMMONWEALTH OF PUERTO RICO,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO

PETITION FOR REHEARING

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Appellants present their petition for a rehearing of the above-entitled cause and, in support thereof, respectfully show:

Grounds for Rehearing

The following are substantial grounds available to petitioners and not previously presented to the Court.

The taking of Appellants' lands by the Commonwealth as part of a "mechanism . . . to freeze and regulate the price of land" (124) * in Puerto Rico presents a substantial question of violation of rights guaranteed by the Fifth Amendment. That question cannot be, and has

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* Page references are to Appellants' Jurisdictional Statement, Appendix B.

not been, ultimately answered by the decision of the court below to the preclusion of effective review by this Court.

(1) When the taking of private property by a State or Commonwealth is justified as within the "public use" provision of the Fifth Amendment, the constitutional meaning and application of this provision are open to scrutiny by this Court.

(2) Although this Court has given deference to the view of a state's highest court upon what constitutes a Fifth Amendment public use, its revisory role should not be reduced to an idle gesture. The decision of the court below calls for correction; it goes beyond any prior case in decreeing that the outright taking of private property is necessarily permitted as a means of exercising regulatory power.

(3) The fallacious reasoning of the court below appears from its opinion (123-125), which declares that inasmuch as regulating land prices was a proper legislative objective, *therefore* the condemnation of private property in pursuance of the regulatory scheme must automatically be proper as a "public use."

(4) There is no warrant in law or reason for the doctrine that what the Commonwealth may regulate, the Commonwealth may take by eminent domain. Such a proposition would mean that the power to regulate apartment rental charges would carry *ipso facto* the power to condemn land and apartment buildings to further the regulatory purpose. Particularly under the extraordinary circumstances presented by the record here, such a doctrine is constitutionally impermissible.

(5) The special circumstances of this case that call for constitutional review go beyond even the erroneous equating of the power to condemn with the power to regulate.

Here, the statute purports to sanction what the agency has proceeded to do: to take private lands for a future use, unspecified and wholly undetermined, in order to transfer it from one man to another who will be identified according to future official will or whim. Endless possibilities of arbitrary favoritism and abuse are thus encouraged. Against such invitations to injustice, the Fifth Amendment's safeguards surely stand guard.

CONCLUSION

For the foregoing reasons it is respectfully urged that this petition for a rehearing be granted, and that, upon further consideration, the judgment of the Supreme Court of the Commonwealth of Puerto Rico be reversed.

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Certificate of Counsel

I, JAMES B. DONOVAN, of counsel for the above-named appellants, do hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay.

JAMES B. DONOVAN,
Counsel for Appellants.